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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,970	08/28/2003	Mark L. Lantry	47320.0114	1969
25928	7590	03/29/2005	EXAMINER	
CHRISTOPHER J. KULISH, ESQ HOLLAND & HART LLP P. O. BOX 8749 DENVER, CO 80201-8749			TRAN, KHOI H	
			ART UNIT	PAPER NUMBER
			3651	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/604,970

Applicant(s)

LANTRY ET AL.

Examiner

Khoi H Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 14-17, 36 and 37 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 18-20 and 22 is/are allowed.
- 6) ☒ Claim(s) 1, 3-13, 21, 26, 29-35 and 38-43 is/are rejected.
- 7) ☒ Claim(s) 2, 27 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


KHOI H. TRAN
PRIMARY EXAMINER

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species I, claims 1-13, 18-35, 38, and 39-43 in the reply filed on 02/22/2005 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 21, and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claims 4 and 39, the negative limitation "not defined as a virtual exit" renders the claim indefinite because it is not distinct as to which port or which storage location applicant is referring.

In regards to claim 21, the negative limitation "not defined as a virtual exit" renders the claim indefinite because it is not distinct as to which port or which storage location applicant is referring. In addition, this claim appears to contradict the claimed method step of claim 18. Claim 18 specifically indicated that the storage element is moved to a virtual exit port before exiting to the actual exit port. However, dependent claim 21 claims that the storage element is moved directly to the actual exit port without the intermediate step of being housed at the virtual exit port. Claim 21 contradicts claim 18.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 4-7, 5-13, 26, 29-35, 38-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Jesionowski et al. 6,338,006.

Jesionowski '006 discloses a robotic data storage library and method for providing virtual exit port to the library per claimed invention. The library comprises plurality of storage locations. Jesionowski '006 provides and defines virtual exit port for any data storage element housed within the library. The virtual port(s) provides a solution for the traffic jam problem of the actual exit port. When an actual exit port is busy, the controller provides virtual exit port for the waiting storage element. The controller then maps out the virtual exit port so that the host computer will perceive the virtual exit port as an actual exit port. When the actual port becomes available, the controller issues a command to actually move the storage element from the virtual exit port to the actual exit port. The controller also issues direct exit command for the storage element to move from the respective storage location to the actual exit port when there is no traffic jam problem. Jesionowski '006 provides inventory update after the storage element exits the actual exit port.

In regards to claims 5-9, any virtual exit port location can be defined as a preferred location. When Jesionowski '006 virtual exit ports are located next to the

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actual exit port they are the closest storage locations when compared to other storage locations within the library.

In regards to claims 10-13, Jesionowski '006 library comprises a control panel, a host computer, and a controller for defining the virtual exit port.

Allowable Subject Matter

6. Claims 18-20 and 22-25 are allowable over the prior art of record.
7. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Claims 27 and 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

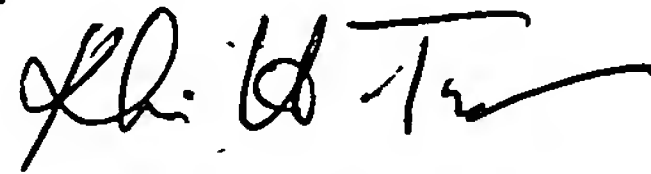
9. Additional references made of record and not relied upon are considered to be of interest to applicant's disclosure: see attached USPTO Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoi H Tran
Primary Examiner
Art Unit 3651

KHT
03/18/2005